

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
RED ROCK SOURCING LLC and
CORONADO DISTRIBUTING LLC,
:

Plaintiffs,
:

-v-
:

JGX, LLC and LIBERTY INTERNATIONAL
DISTRIBUTORS, LLC,
:

Defendants.
:
-----X

21 Civ. 1054 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On March 11, 2022, the Court issued an Order concerning Plaintiffs’ letter requesting a pre-motion discovery conference regarding Defendants David Ghermezian, Eli Berkowitz, and Triple Five Worldwide LLC’s (collectively, the “Worldwide Defendants”) apparent spoliation of evidence. Dkt. 153 (the “March 11 Order”). In that Order, the Court directed the parties to make certain submissions to the Court, including sworn affidavits by each of the Worldwide Defendants, as well as counsel for these Defendants which were to be submitted by March 25, 2022. *Id.* at 1-2. Notwithstanding the Court’s clear directive, the Worldwide Defendants and their counsel failed to comply with the Court’s March 11 Order.

After the Worldwide Defendants and their counsel failed to submit sworn affidavits by the March 25 deadline, Plaintiffs filed a letter on March 28, 2022 requesting that the Court make certain adverse findings of fact against these Defendants. Dkt. 155. In response to Plaintiffs’ letter, counsel for the Worldwide Defendants filed a letter representing that his “understanding of the Court’s March 11th order was that plaintiffs would furnish a list of the documents that the Worldwide Defendants allegedly failed to produce by March 25, and that [his] clients would produce their

copies of those documents by April 8th and furnish affidavits explaining why those documents were not produced earlier.” Dkt. 156 at 1. It would seem that counsel for the Worldwide Defendants did not review the entirety of the Court’s March 11 Order, which expressly required the Worldwide Defendants and their counsel to submit sworn affidavits by March 25, 2022. *See* March 11 Order at 1-2.

Accordingly, it is hereby ORDERED that, by April 4, 2022, the Worldwide Defendants and their counsel shall submit sworn affidavits as previously ordered by the Court in the March 11 Order. Specifically:


- By April 4, 2022, Defendants Ghermezian, Berkowitz, and Triple Five each shall submit a sworn affidavit setting forth in detail:
 - (1) the process that each Defendant undertook to identify documents and communications responsive to Plaintiffs’ requests;
 - (2) what effort each Defendant undertook to preserve all documents and communications potentially relevant to this action, when each Defendant undertook such effort, and if any of the Defendants received a document preservation or litigation hold notice; and
 - (3) whether Defendants failed to preserve any documents or communications potentially relevant to this action, including whether any documents or communications relevant to this action may have been deleted to destroyed, inadvertently or otherwise, and, if so, an explanation of the circumstances under which such relevant documents may have been deleted or destroyed.
- By April 4, 2022, counsel for Defendants Ghermezian, Berkowitz, and Triple Five shall submit a sworn affidavit setting forth in detail:
 - (1) an explanation of the document collection, review, and production in this action in response to Plaintiffs’ discovery requests as to each Defendant, including whether any Defendant or counsel retained a third-party vendor to collect the documents from that Defendant’s computer(s), cell phone(s), email account(s), and/or other electronic devices, databases, or servers;
 - (2) the search parameters that counsel applied in identifying relevant documents, including the relevant time period and search terms, if any;
 - (3) an explanation of who undertook the responsiveness review for each Defendant’s documents and communications; and
 - (4) if counsel for Defendants Ghermezian, Berkowitz, and Triple Five did not

undertake the review of the documents and communications for responsiveness, what steps counsel undertook to ensure identification and production of all responsive documents in Defendants' possession, custody, or control, and Defendants' compliance with their discovery obligations under the Federal Rules of Civil Procedure and this Court's orders.

If the Worldwide Defendants and/or their counsel fail to comply with the April 4 deadline, or any of the remaining deadlines set forth in the March 11 Order, the Court will order the Worldwide Defendants to show cause why the Court should not make adverse findings against them as proposed by Plaintiffs in their March 28, 2022 letter.

SO ORDERED.

Dated: March 29, 2022
New York, New York



JOHN P. CRONAN
United States District Judge